

**Federal Communications Commission**  
**2006 Biennial Regulatory Review**  
**EB Docket No. 06-153**

**Enforcement Bureau**  
**Staff Report**  
**February 14, 2007**

## I. OVERVIEW

1. The Enforcement Bureau (EB) is the primary organizational unit within the Commission that is responsible for enforcement of provisions of the Communications Act and the Commission's rules. EB has specific responsibility for administering rules governing formal common carrier complaint proceedings at the Commission and the imposition of forfeiture penalties.<sup>1</sup> Staff reviewed these rules to determine whether they are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service," as required by Section 11 of the Communications Act of 1934, as amended.<sup>2</sup> As part of this review, the Commission sought recommendations from the public concerning whether these rules and procedures should be modified or eliminated.<sup>3</sup>

## II. SCOPE OF REVIEW

2. The Commission identified the following rule parts containing regulations administered by the Enforcement Bureau for review and comment in the Public Notice:

Part 1 – Practice and Procedure – Sections 1.711 and 1.720 to 1.736 set forth rules for the filing of formal complaints against common carriers. Sections 1.80 and 1.89 of the Commission's rules address forfeiture proceedings and penalties and Notice of Violations proceedings.

Increased competition in the marketplace does not diminish the need for these rules, and thus we do not find that they are no longer necessary in the public interest as the result of meaningful economic competition between telecommunications service providers. Accordingly, we find that these rules should be retained.

3. Rules 1.711 and 1.720 through 1.736 set forth the procedures for formal complaint proceedings against common carriers. Competitive developments have not affected the need for these rules. Section 208 of the Communications Act continues to permit any person to file a complaint with the Commission alleging that a common carrier has violated the provisions of the Communications Act. Indeed, in a more competitive marketplace, such complaints are often filed by one competitor against another. So long as the right to file complaints remains, the Commission needs to maintain rules establishing the procedures for filing those complaints. No party has filed comments arguing to the contrary. Accordingly, we do not find that these rules are no longer necessary in the public interest as the result of meaningful economic competition between providers of telecommunications service.

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<sup>1</sup> 47 C.F.R. §§ 1.80, 1.711, and 1.720 -1.736; *see also* 47 C.F.R. § 1.89 (notice of violation proceedings).

<sup>2</sup> 47 U.S.C. § 161.

<sup>3</sup> *Public Notice, The Commission Seeks Public Comment in the 2006 Biennial Review of Telecommunications Regulations – EB Docket No. 06-153, FCC 06-115, August 10, 2006.*

4. The American Association of People with Disabilities (“AAPD”) filed comments in this proceeding supporting retention of the formal complaint rules in sections 1.711 and 1.720 through 1.736.<sup>4</sup> While supporting retention of the rules, AAPD submitted proposals for ways to improve the complaint intake process as it relates to complaints alleging violations of Section 255 of the Communications Act. For example, AAPD recommends that the formal complaint rules be modified to expressly reference Section 255 or to include instructions for filing a formal complaint alleging a violation of Section 255 of the Act.<sup>5</sup> AAPD also recommends that the complaint filing form be modified to include reference to Section 255 of the Act.<sup>6</sup> As stated above, Section 11 requires us to determine whether rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.” AAPD does not suggest that the modifications it proposes meet this standard; however, we appreciate the concerns raised by AAPD, and will remain sensitive and responsive to all inquiries regarding application of our formal complaint rules to ensure that those wishing to file complaints alleging violations of Section 255 of the Act have the information they need to proceed.

5. Rule 1.80 sets forth who may be subject to a forfeiture penalty for violation of the Communications Act or Commission rules and orders, the limits on the amount of the forfeitures that may be assessed, and guidelines for determining the amount of such forfeitures. Competitive developments have not reduced the need for these rules. Enforcement is important in a competitive marketplace to ensure that the market is able to function without unlawful interference, and thus rule 1.80 remains necessary in the public interest. No parties argued for elimination of this rule. Accordingly, we do not find that this rule is no longer necessary in the public interest as a result of meaningful economic competition between providers of telecommunications service. However, as a result of ongoing review of rule 1.80, staff recommends initiating a new proceeding or proceedings to consider modifying the forfeiture guidelines to ensure that these guidelines are up-to-date.

6. Rule 1.89 sets forth the process used by the Commission when issuing a Notice of Violation. The rule provides that, except in cases of willfulness or those in which public health, interest or safety requires otherwise, any person who holds a license, permit or other authorization appearing to have violated any provision of the Communications Act or any provision of the Commission’s Rules will, before revocation, suspension, or cease and desist proceedings are instituted, be served with a written Notice of Violation calling these facts to his or her attention and requesting a statement regarding the matter. The Notice of Violation may be combined with a Notice of Apparent Liability for Forfeiture. Competitive developments have not reduced the need for this rule. Enforcement actions, and procedures to ensure notification to violators of those actions, are imperative in a competitive marketplace to ensure that the market is

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<sup>4</sup> See AAPD Comments at 2-3.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 3.

able to function without unlawful interference. To that end, staff does not find that rule 1.89 is “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.” No parties argued for elimination of this rule, and we recommend that it be retained.

### **III. RECENT AND ONGOING ACTIVITIES**

7. At any given time, the Enforcement Bureau has pending investigations and complaint proceedings involving competition rules for telecommunications service providers in various stages of activity. The Bureau investigates possible violations of the Communications Act and the Commission’s rules to ensure a level playing field which in turn promotes robust competition between providers of telecommunications service as well as to ensure that consumers are protected in a competitive landscape.

8. During the past two years, for example, the Bureau or the Commission has taken enforcement action in the following areas related to telecommunications service providers, among others: the enforcement of Universal Service Fund (USF) and other regulatory program obligations (including the Telecommunications Relay Service Fund and the North American Numbering Plan Administration Fund), where the Commission, in 2006 alone, has issued notices of apparent liability for forfeiture and entered into consent decrees totalling nearly \$1.2 million dollars and recovered nearly \$1.5 million dollars in underpayments to the Fund, as well as suspended or debarred four companies or individuals convicted of E-Rate fraud from participating in the Universal Service program. The Commission also took enforcement action to ensure that payphone service providers are fairly compensated for each and every call when, most recently in 2006, it issued a notice of apparent liability for forfeiture in the amount of \$466,000 against a carrier for its failure to comply with the Commission’s payphone compensation rules. In this regard, the Commission also issued an Order affirming the Bureau’s decision granting a liability complaint filed by payphone service providers and their agents for billing and collection. The Bureau’s competition enforcement also includes resolution of significant carrier-to-carrier and marketplace issues, as well as the enforcement of pole attachment rights, where the Bureau facilitates the resolution of disputes between telecommunications carriers and cable system operators, on the one hand, and utilities, on the other hand, regarding rights afforded by section 224 of the Act. For example, in 2006, among other matters, the Bureau resolved competitive market disputes through pre-complaint mediations and formal complaint proceedings against carriers, as well as initiated investigations related to the marketing of unauthorized equipment.

### **IV. SUMMARY OF BIENNIAL REGULATORY REVIEW**

9. The staff’s review of rules 1.711, 1.720 through 1.736, 1.80 and 1.89, as well as its review of comments submitted in connection with the biennial review proceeding, do not support elimination or modification of the subject rules as a result of competitive developments in the marketplace. Specifically, staff does not find that these rules are “no longer necessary in the public interest as the result of meaningful economic

competition between providers of such [telecommunications] service.” Independent of the requirements of section 11, however, as stated above, staff recommends initiating a proceeding to consider modifying section 1.80 of the Commission’s rules.